

1	UNITED STATES BANKRUPTCY COURT	
2	DISTRICT OF PUERTO RICO	
3	In Re:	) Docket No. 3:17-BK-3283(LTS)
4		)
5	The Financial Oversight and	) PROMESA Title III
6	Management Board for	)
7	Puerto Rico,	) (Jointly Administered)
8	as representative of	)
9	The Commonwealth of	)
10	Puerto Rico, et al.,	) January 16, 2019
11	Debtors.	) [CORRECTIONS BY PETER HEIN]
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12	In Re:	) Docket No. 3:17-BK-3284(LTS)
13		)
14	The Financial Oversight and	) PROMESA Title III
15	Management Board for	)
16	Puerto Rico,	)
17	as representative of	)
18		)
19	Puerto Rico Sales Tax	)
20	Financing Corporation,	)
21	(COFINA)	)
22	Debtor.	)
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23	The Bank of New York	) Docket No. 3:17-AP-133(LTS)
24	Mellon,	)
25		) in 17-BK-3284(LTS)
26	Plaintiff,	)
27	v.	)
28		)
29	Puerto Rico Sales Tax	)
30	Financing Corporation,	)
31	(COFINA), et al.,	)
32		)
33	Defendants.	)

1 MR. ROSEN: Exactly, Your Honor.

2 THE COURT: And I would take notice that the Proof of  
3 Claim exists and that that is the assertion made by Mr. Hein  
4 in his Proof of Claim?

5 MR. ROSEN: That is correct, Your Honor.

6 And then there would be no cross-examination of  
7 Mr. Hein.

8 THE COURT: Thank you.

9 Mr. Hein, is this acceptable to you?

10 MR. HEIN: Actually, Your Honor, this is the first  
11 I'm hearing of it, because I cannot bring electronic devices  
12 into the courthouse here. I have not received any  
13 communication, and don't have my electronic device in the  
14 courtroom. I had to check it downstairs.

15 So unfortunately, Your Honor, this is the first I'm  
16 hearing of this. I think, you know, my -- just -- I'm just  
17 reacting on the spot. The Exhibit B to my Proof of Claim, the  
18 Bond Buyer article, I certainly think that ought to at least  
19 be taken as legal argument, as part of my objection.

20 There was a reference to paragraph 28. Paragraph 28  
21 attaches a transcript of an October 31 investor call by the  
22 Government Development Bank for Puerto Rico, referred to by  
23 Puerto Rico as a conference call about COFINA legal opinions.  
24 The transcript is on the Government Development Bank investor  
25 resources website. That's where I got the document. It's

1 from a Puerto Rico Government website.

2 So this is something that would be certainly, I  
3 think, appropriate for the Court to consider. It's a public  
4 record document, statement by the Government of Puerto Rico.  
5 And I certainly think we can charge the Commonwealth with its  
6 own statements.

7 And as to the other specifics, I was not able to  
8 write down all of the paragraph numbers. Forty-one, there  
9 again you have a presentation made by the Commonwealth of  
10 Puerto Rico on an investor webcast October 15, 2013. I  
11 highlight, at page 57, where the Commonwealth makes the point  
12 that their per capita tax burden is the lowest of any U.S.  
13 jurisdiction. Why? Because they don't pay federal taxes,  
14 they don't have to pay federal taxes and service the U.S.  
15 Government debt.

16 It's the Commonwealth who's making the point that you  
17 cannot compare the Puerto Rico per capita debt to the per  
18 capita debt of a state. It's just apples to oranges. It's  
19 not a valid comparison.

20 Page 63 of that same Exhibit <sup>S</sup>~~F~~. And Your Honor, if I  
21 may just pull my document? May I indulge on you for ten  
22 seconds to pull it? It's out of my current reach.

23 THE COURT: Yes.

24 MR. HEIN: Thank you.

25 THE COURT: Yes, you may.

1 MR. EISENBERG: It appears the camera may have  
2 frozen, Your Honor, because Mr. Hein is maintaining a very  
3 stoic, unmoving position.

4 MR. HEIN: I'm back. So page 63<sup>60</sup> is another  
5 Commonwealth document. The Commonwealth is telling investors,  
6 COFINA is secured by a stable stream of revenues that is not  
7 subject to clawback. Law 91, 2006, which created COFINA,  
8 transferred ownership of a portion of the sales tax to COFINA  
9 and provided that any transferred portion was not available  
10 resources under the Constitution provisions related to full  
11 faith and credit bonds.

12 So --

13 THE COURT: I'm sorry. So are you arguing that the  
14 statements attributed to GDB and/or the Commonwealth in those  
15 documents, the transcript and the record of the call, are  
16 statements attributable to COFINA as a party opponent and  
17 therefore excepted from the hearsay rule? Is that where  
18 you're going?

19 MR. HEIN: I think they're both attributable to  
20 COFINA, as well as the Commonwealth, which is seeking to take  
21 bondholder money that does not belong to the Commonwealth.

22 And yes, absolutely, I believe that these statements  
23 are chargeable to the Puerto Rican parties to this proceeding.  
24 And I think -- frankly, I'm just honestly aghast that Puerto  
25 Rico would take the position that its own official statements

1 cannot be offered in this proceeding.

2 MR. KIRPALANI: May I respond?

3 THE COURT: Mr. Kirpalani.

4 MR. KIRPALANI: Yes. If I can respond, Your Honor?

5 So to be clear, and I apologize in advance to  
6 Mr. Hein, there was no attempt to surprise you with anything.  
7 It's just we've all been doing a lot of things over the past  
8 several days.

9 Paragraph 28 and paragraph 41 of Mr. Hein's  
10 Declaration attach investor presentations by the GDB in the  
11 first instance, and statements of former either government  
12 officials or government advisors to the Commonwealth or GDB in  
13 the case of paragraph 41.

14 Our position is those are not binding admissions as  
15 against COFINA appearing through the Oversight Board. But we  
16 don't object they be included in Mr. Hein's Declaration. We  
17 just don't think that they're for the truth of the matter  
18 asserted.

19 THE COURT: So you don't have a problem with them  
20 staying in the record, but what you're asking me to accept is  
21 that it is recorded that those statements were made but not  
22 accept that as proof of the underlying propositions?

23 MR. KIRPALANI: That's correct.

24 THE COURT: Mr. Hein, can you live with that?

25 MR. HEIN: I honestly think that this should be

1 binding and preclusive. And it goes beyond what I just read.  
2 I mean, they're also referencing the Puerto Rico based  
3 Underwriters Council<sup>set</sup>, the Puerto Rico Secretary of Justice and  
4 their strong legal opinions that SUT is not subject to  
5 clawback by GO bondholders under the Puerto Rico Constitution.  
6 Clawback opinion enjoys broad bipartisan support. Four  
7 different Secretaries of Justice serving three different  
8 administrations of alternating political parties have issued  
9 official opinions that the SUT allocated to COFINA is not  
10 subject to clawback.

11 I mean, this is what Puerto Rico was telling  
12 investors like me. And to say this should not be admitted,  
13 frankly, for the truth, I think Your Honor, is doing an  
14 injustice.

15 THE COURT: I will take them for the fact that the  
16 statements were made as recorded in those documents. The  
17 ultimate legal status of the bonds, which is a disputed issue  
18 here, is one that either needs to be settled or litigated and  
19 decided by a court, as opposed to -- oh, my goodness. We've,  
20 at least I've lost the picture.

21 Mr. Hein, can you still hear me?

22 MR. HEIN: I can still hear you, Your Honor. Thank  
23 you.

24 THE COURT: Okay. Is one that would be decided by a  
25 court, and not by an opinion or a statement of the government.

1 And so the objection is sustained to the extent that  
2 Exhibits 28 and 41 are admitted for their existence of the  
3 statements and not for the truth of the matters asserted.

4 MR. HEIN: Thank you, Your Honor.

5 THE COURT: Thank you.

6 And with respect to the paragraphs of your  
7 Declaration, the proposal is to accept those particular  
8 paragraphs as legal arguments, legal advocacy as opposed to  
9 factual statements, and that's a distinction I understand and  
10 work with all the time. Can you live with that?

11 MR. HEIN: I honestly haven't been able to reread  
12 them, and I'm not sure I caught all of them.

13 What I would request, Your Honor, is that before I  
14 make my legal argument, I'd like to have the complete list of  
15 the paragraphs objected to, and at least look at them to see  
16 whether I have a disagreement with that, Your Honor.

17 THE COURT: That's fine. Should I repeat the list  
18 that I was given, or Mr. Kirpalani --

19 MR. KIRPALANI: I can do it. Thank you, Your Honor.

20 So it would be paragraphs 10, 11, 12, 13, 14, 15, 31,  
21 35, 42, 43, 46, 49, 51, 52, 53, and 54.

22 MR. HEIN: And I will take a look at those off line,  
23 and when I speak to articulate my legal argument, I will  
24 advise Your Honor if I have any problem with that. Thank you  
25 very much.

1 THE COURT: Thank you, Mr. Hein.

2 MR. HEIN: Thank you very much.

3 THE COURT: Mr. Rosen.

4 MR. ROSEN: Thank you, Your Honor.

5 Your Honor, that would take us back to what would be  
6 the debtors' three witnesses to be presented. And Your Honor,  
7 subject to the Court's determination with respect to the  
8 standing issue, but even then, I'm not even sure it will  
9 matter, because I don't think that PROSOL-UTIER has made a  
10 formal request with respect to either of the three witnesses.

11 The debtors would put up Ms. Christina Pullo from  
12 Prime Clerk and admit her declaration and exhibits into  
13 evidence. There's been no request with respect to a  
14 cross-examination. She was the tabulation agent with respect  
15 to the Plan of Adjustment, acceptances and elections.

16 We also have Ms. Natalie Jaresko again, Your Honor,  
17 with respect to confirmation related issues, and we would move  
18 her declaration and exhibits into evidence.

19 And there has been, as far as we know, Your Honor, no  
20 request for any cross-examination. And consistent with the  
21 Court's Order, no one has posited any factual issues or any  
22 exhibits with respect to cross-examination.

23 Likewise, there was Mr. David Brownstein, who would  
24 be our third witness, Your Honor. We have his declaration  
25 also submitted to the Court and would have exhibits to be



1 THE COURT: Okay. So is there any objection to ECF  
2 4792?

3 MR. EISENBERG: No, Your Honor, there is none.

4 THE COURT: Okay. So documents 4793 and 4792 for  
5 COFINA are admitted in evidence. 4793 being for GMS Group.

6 (At 4:25 PM, Exhibits admitted into evidence.)

7 MR. EISENBERG: Obviously, Your Honor, I would be  
8 hard-pressed to object moving into evidence of my client's own  
9 answers to Interrogatories.

10 THE COURT: Well, amazing things happen in these  
11 proceedings, so you never know.

12 MR. EISENBERG: Nobody calls me amazing. It's okay.

13 And I think that leaves us with addressing Mr. Hein's  
14 Declaration, which is number 4606. And there was the previous  
15 colloquy right after lunch about the sections of Mr. Hein's  
16 Declaration to which there were objections.

17 Mr. Hein wanted the opportunity to review. Obviously  
18 there's been some other proceedings to review -- obviously  
19 there's been some other proceedings that have taken place.  
20 And I would take the view that I guess Mr. Hein is entitled to  
21 speak as to the issue on those particular paragraphs.

22 I believe there was a resolution that all of the  
23 exhibits to his Declaration were to be admitted subject to the  
24 qualifications containing statements of Puerto Rican officials  
25 which were admitting the fact they have been made, with the

1 Court having to make the determination as to it. And then  
2 there was the Court taking cognizance of Exhibit N, which was  
3 Mr. Hein's proof of claim, which had as one of its exhibits an  
4 article, which was acknowledged as being subject to a hearsay  
5 attack, but was included as part of the Proof of Claim. I  
6 hope I am recalling correctly.

7 And so we would tender Mr. Hein's Declaration and  
8 exhibits, of course, subject to the scope of what I'll call  
9 the contested paragraphs. And obviously Mr. Hein has to have  
10 the opportunity to speak as to those.

11 THE COURT: Yes. And for the record, that  
12 Declaration and exhibits are included in the compilation that  
13 was filed as document 4606 in 3283?

14 MR. EISENBERG: Yes, that is correct.

15 THE COURT: All right. Mr. Hein is at the podium in  
16 New York.

17 Mr. Hein.

18 MR. HEIN: Yes. Thank you, Your Honor.

19 I have reviewed the paragraphs that were referenced  
20 Since the exhibits are being admitted, I'm okay with the text  
21 of the Affidavit paragraphs that were read out being treated  
22 as argument.

23 THE COURT: Thank you. And so --

24 MR. HEIN: Thank you, Your Honor.

25 THE COURT: And so is there any objection to the

1 tender as described by Mr. Eisenberg and agreed to by  
2 Mr. Hein?

3 MR. KIRPALANI: No objection.

4 MR. ROSEN: None, Your Honor.

5 THE COURT: So the tender of the Hein Declaration  
6 subject to the qualifications -- hold on a minute. Yes.

7 Thank you. I apologize for that pause. We were just  
8 dealing with some administrative matters as to how this will  
9 be recorded in the Court records.

10 And so the tender with respect to Mr. Hein's  
11 Declaration and exhibits with the caveats and qualifications  
12 that have been recited on the record is accepted.

13 So at this point, Mr. Eisenberg, did you wish to  
14 offer additional testimony of Mr. Elliott in rebuttal or  
15 opposition to the COFINA and Senior Bondholders' case?

16 Now, Mr. Kirpalani is walking faster so he gets the  
17 podium.

18 MR. EISENBERG: He started closer, Your Honor.

19 THE COURT: He chose his seat carefully.

20 MR. KIRPALANI: Your Honor, I'm sorry, but I just --  
21 Susheel Kirpalani on behalf of the COFINA Senior Bondholder  
22 Coalition.

23 I don't mean to be difficult, but I just flatly  
24 disagree with Mr. Eisenberg's characterization of being able  
25 to call a live witness who submitted a declaration two days